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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.L., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.L.,

Defendant and Appellant.

E057943

(Super.Ct.No. INJ1200489)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence P. Best,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed as modified;
reversed in part.

Erica Gambale, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Deputy Attorney General, for Plaintiff and Respondent.

Defendant E.L. is on juvenile probation after the juvenile court found true allegations that he committed robbery and received stolen goods from the same incident in which defendant took a younger student's cell phone by threatening to shoot him with a gun. Defendant argues the court improperly found it to be true that he both stole property and received the same property. Defendant also challenges as vague and overbroad the probation condition that he not possess narcotics, alcohol and other drugs. As discussed below, we agree that the true finding on the receiving stolen goods allegation must be reversed, and order the probation condition modified to make it clear that defendant may possess prescription medications.

FACTS AND PROCEDURE

On November 15, 2012, defendant, accompanied by two other boys, demanded the cell phone of a younger boy after following him from the boy's high school to several commercial establishments, and finally to an outside table at an ice cream store. The boy initially refused, but eventually handed over his cell phone after defendant stated "I have a gun right now. I'll blast you right now."

At a contested jurisdictional hearing held on December 20, 2012, the juvenile court found true the allegations in a juvenile delinquency petition that defendant committed robbery (Pen. Code, § 211) and received stolen goods (Pen. Code, § 496,

subd. (a)). The court found that defendant came within section 602 of the Welfare and Institutions Code.

At the disposition hearing held on January 17, 2013, the juvenile court adjudged defendant a ward of the court and placed him on probation. This appeal followed.

DISCUSSION

1. Receiving Stolen Goods Finding Is Reversed

Defendant argues the juvenile court erred when it found true allegations that he both committed robbery and received stolen goods, when the basis of both allegations was the theft of the same cell phone. The People concede this issue and we agree. Under Penal Code section 496, subdivision (a), *People v. Smith* (2007) 40 Cal.4th 483, and *People v. Ceja* (2010) 49 Cal.4th 1, the true finding as to the receiving stolen goods allegation is reversed.

2. Probation Condition Prohibiting Controlled Substances

Defendant challenges as unconstitutionally vague and overbroad the condition of his probation that he “Not knowingly possess, consume, inhale, or inject any intoxicants, alcohol, narcotics, aerosol products, or other controlled substances, poisons, illegal drugs, including marijuana, nor possess related paraphernalia.” Defendant argues this condition prohibits the use of prescription medications.

The People first argue that defendant waived this argument when it failed to challenge the probation condition at the disposition hearing. However, because defendant argues the condition is both vague and overbroad under the U.S. Constitution, we address the merits of his argument. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

“A probation condition is constitutionally overbroad when it substantially limits a person’s rights and those limitations are not closely tailored to the purpose of the condition.” (*People v. Harrison* (2005) 134 Cal.App.4th 637, 641, citing *In re White* (1979) 97 Cal.App.3d 141, 146 [“‘The Constitution, the statute, all case law, demand and authorize only “reasonable” conditions, not just conditions “reasonably related” to the crime committed.’ [Citation.] [¶] Careful scrutiny of an unusual and severe probation condition is appropriate [citation].”] “[C]onditions of probation that impinge on constitutional rights must be tailored carefully and ‘reasonably related to the compelling state interest in reformation and rehabilitation’ [Citation.]” (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 879.) Similarly, “[a] probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness. [Citation.]” (*In re Sheena K., supra*, 40 Cal.4th at p. 890.)

Here, defendant argues that this term fails to distinguish between illegal controlled substances and legal prescription drugs. While we do not believe that these terms would be commonly misunderstood, or even would be misunderstood by defendant, we find the language, in fact, very broad. “Controlled substances” are defined and listed in Health and Safety Code sections 11054 and 11055. They include not only schedule I substances, which generally have no recognized medical use, like heroin (Health & Saf. Code, § 11054, subd. (c)(11), but many other commonly prescribed medications.

In view of the great likelihood that defendant will at some time need a legal and legitimately prescribed controlled substance, we agree that the term should be modified.

Therefore, the following sentence should be added at the end of this probation term, as suggested in the alternative by the People: “The minor may take medications prescribed by a physician, but he must give written notice of the prescription to his probation officer.”

DISPOSITION

The true finding on the receiving stolen goods allegation is hereby reversed. We modify the condition of defendants’ probation regarding controlled substances, discussed herein, to add the sentence: “The minor may take medications prescribed by a physician, but he must give written notice of the prescription to his probation officer.”

In all other respects, the judgment is affirmed.

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RAMIREZ
P. J.

We concur:

KING
J.

CODRINGTON
J.